CF 105

(1) (3)

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR (CHHATTISGARH)

WRIT PETITION NO. 353 **/2004**

PETITIONER Smt. Pushpa Devi, wife of Shri Ramesh Soni, aged about 45 years, occupation – President of Nagar Palik Parishad, Akaltara, Distt. Janjgir-Champa (Chhattisgarh)

VERSUS

RESPONDENTS

1. The Chhattisgarh State Election Commission through : The Secretary, D.K.S. Bhawan, Raipur (Chhattisgarh)

P.R. No. 342 Dy
Presented by Shri Mahesh Pandey
dated 31.8.04

2. The District Election Officer, District Janjgir-Champa (Chhattisgarh)

Deleted as per court order dated 9-7-2004
Kiran
9-7-04

~~3. The Madhya Pradesh State Election Commission through : The Secretary, Vallabh Bhawan, Bhopal, (Madhya Pradesh)~~

4. The Municipal Council, (Old Nagar Panchayat) Akaltara, through : Chief Municipal Officer, Akaltara, District Janjgir-Champa (Chhattisgarh)

WRIT PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA

01) **PARTICULARS ABOUT THE PETITIONER**:

As per cause title.

02) **PARTICULARS ABOUT THE RESPONDENTS**:

As per cause title.

(132)

HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

Writ Petition No.353 of 2004

Smt. Pushpa Devi

- Versus -

Chhattisgarh State Election Commission & others

POST FOR ORDER ON 14 SEPTEMBER, 2004

Sd/-
L.C.BHADOO
Judge

(133)

A.F.R.

HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

Writ Petition No.353 of 2004

Smt. Pushpa Devi

- Versus -

Chhattisgarh State Election Commission & others

Present: -

Mr. Rajesh Pandey, Advocate: For the petitioner.

Mr. N.K. Agrawal, Dy. Adv. General: For respondent Nos.1 and 2.

Mr. Sanjay K. Agrawal, Advocate: For respondent No.4.

Mr. Rajeev Shrivastava, Advocate: For the intervener.

Mr. P. Tirky, Deputy Election Officer is present.

O R D E R

(Passed on 14th September, 2004)

L.C. BHADOO, J.

By this writ petition filed under Articles 226/227 of the Constitution of India, the petitioner has questioned the legality, propriety and correctness of the order dated 27-1-2004 passed by the State Election Commission whereby the petitioner has been disqualified to continue as Chairman of Nagar Palik Parishad, Akaltara for not lodging the account of election expenses as per the provisions of Section 32-B of the M.P. Municipalities Act, 1961 (hereinafter referred to as 'Act').

(2) Briefly stated, facts leading to filing of this writ petition are that the petitioner herein contested the election for the post of President, Nagar Panchayat, Akaltara in the month of December, 1999 and on 27-12-99 she was duly elected in that election. As per the provisions of Section 32-B of the Act, 1961 the petitioner was required to furnish the account of election expenses within 30 days from the date of declaration of the result

of election. As the petitioner failed to lodge the expenditure account, accordingly, the State Election Commission by exercising the powers under Section 32-C of the Act passed the impugned order declaring the petitioner disqualified to continue on the said post.

(3) The petitioner's case is that she was declared elected on 27-12-99. She had lodged the account of election expenses on 4-1-2000 within 30 days from the date of declaration of the result. Copy of the receipt is Annexure-P/4. One Imran Khan, who is the Vice President of the said Nagar Panchayat, Akaltara, belonging to Bhartiya Janata Party started filing false complaints against the petitioner with an ulterior motive to remove her from the Office of the President. Even he filed a writ petition No.969/2002 (Imran Khan V. State of Chhattisgarh & Others) on the ground that the petitioner had not filed account of the election expenses. On 17-4-2000, the District Election Officer, Janjgir-Champa issued show cause notice to the petitioner for showing the receipt of lodging the account of election expenses by 20th April 2000. On 20th April 2000, the petitioner appeared and filed reply with the receipt of lodging the account of election expenses. On 22-4-2000, she filed the original receipt of account of election expenses. The District Election Officer again on 27-4-2000 issued show cause notice to the petitioner for again furnishing original receipt along with second copy of account of election expenses. Again the petitioner appeared on 1-5-2000 and submitted the receipt in two sets with mark of receipt on the show cause notice itself. On 3-5-2000, the District Election Officer again asked the petitioner to furnish the details of account of election expenses in Proforma A, B and C within 3 days. The petitioner appeared and showed her relevant documents. Thereafter, on 23-6-2000 the State Election Commission issued show cause notice to the petitioner to file the account of election expenses within 15 days. The petitioner replied to the show cause notice on 13-7-2000.

(4) On 13-11-2000, the District Election Officer issued memo of appearance to the petitioner to appear on 4-12-2000 at 4 pm before the State Election Commission of M. P., Bhopal. The petitioner appeared before the said Election Commission, whereas, reply of the respondents is that the petitioner failed to furnish the statement of account regarding expenditure incurred by her as per the provisions of Section 32-B of the Act. Even she was asked to give the name of the person before whom she submitted the accounts and that is why on 17-4-2000 a wireless information was sent to the petitioner to submit the receipt of election expenses by 20-4-2000 by 2 pm. On 27-4-2000, the Deputy Election Officer issued a notice to the petitioner mentioning therein that the receipt of accounts of election expenses submitted by the petitioner is not clear as to before which officer the accounts of election expenses have been submitted. The signature on the receipt is not clear. The petitioner was further directed to come with the original copy of receipt along with the second copy of the accounts of election expenses in the office of Deputy Election Officer on 1-5-2000 at 11 am, but the petitioner instead of complying with the directions only wrote that the details of accounts expenses have been given on 4-1-2000 and 20-4-2000 in the office of the Collector while signing the receipt of the letter.

(5) Again a memo was issued on 3-5-2000 that the receipt of accounts submitted by the petitioner is not acceptable, as the same is not received by the prescribed officer. The petitioner was further instructed to send the documents as per the memo within 3 days, copy of memo is Annexure-R/4, but the same was never complied by the petitioner. The District Returning Officer sent a report to Secretary, State Election Commission, Bhopal on 19-5-2000 in which it was mentioned that the petitioner has failed to submit her accounts of election expenses as per the provisions of Section 32-B of the Act, therefore, it is requested that the petition may be dismissed.

(6) I have heard learned counsel for the parties.

(7) Shri Rajesh Pandey, counsel for the petitioner, while arguing laid much emphasis on Annexure-P/4, which is Xerox copy of the letter addressed to the District Election Officer, which reads like this:

"To,

The District Election Officer,
Janjgir (Champa).

Sub. Regarding submission of the accounts of election expenses.

Sir,

The details of the expenses incurred by me during Nagar Panchayat Election, Akaltara, in prescribed proforma, are submitted for necessary action.

Thank You

Faithfully

Sd/-

Dated: 4.1.2000 (Smt.Pushpadevi Soni)

Akaltara"

He submitted that the accounts of the election expenses were submitted along with this letter. He further submitted that all the original account was submitted. Even the copies of those documents were not kept by the petitioner with her, therefore, the petitioner had already met with the requirement of the provisions of Section 32-B of the Act.

(8) On the other hand, learned counsel for respondents 1, 2 and 4 argued that the petitioner had never furnished the accounts of the election expenses incurred by her during the Nagar Panchayat Election. They further argued that as per the provisions of M.P. Municipalities Act, 1961 the petitioner was required to furnish true copy of the account to respondent No.2 and the petitioner ought to have kept with herself the original accounts. On demand she ought to have produced those documents, when the show cause notice was issued by respondent No.1 and 2, but she

failed to produce any document, even when it was asked from her that she should disclose the name of the officer before whom she presented the account, she was not able to tell the name of that officer. The impugned order has been passed correctly by respondent No.1, therefore, the petition be dismissed.

(9) In this background of controversy if we look into the relevant provisions of the Act, Section 32-A of the Act envisages that "every candidate at an election of President shall, either by himself or by his election agent, keep a separate and correct account of all expenditure in connection with the election incurred or authorized by him or by his election agent between the date on which he has been nominated and the date of declaration of the result thereof, both days inclusive." Section 32-B envisages that "every contesting candidate at an election of President shall, within thirty days from the date of election of the returned candidate lodge with the officer notified by the State Election Commission an account of his election expenses which shall be a **TRUE COPY OF THE ACCOUNT** kept by him or by his election agent under Section 32-A." Section 32-C envisages the disqualification on failure to lodge account of election expenses. In this connection, an order was issued by the Government of M.P. in the year 1997 i.e. Election Expenses (Maintenance and Lodging of Account) Order, 1997 under the enabling provisions of Sections 14-A of the M.P. Municipal Corporation Act, and 32-A of the M.P. Municipalities Act, 1961. Para-3 of the said order envisages that 'how the particulars of account of election expenses to be maintained'. Para-4 deals with the maintenance of day-to-day account of election expenses. Para-5 deals with production of the record of day-to-day account election expenses for inspection. Para-6 envisages that 'soon after declaration of the result of election, every contesting candidate or his election agent shall also prepare an abstract statement of election expenses in Proforma B, clearly showing the total expenditure on various items listed therein.'

(10) Para-7 deals with lodging of the account of election expenses with the District Election Officer within 30 days which shall comprise the following documents namely:-

(a) the register of day to day account of election expenses referred to in paragraph 4, in original,

(b) vouchers relating to the entries made in the register of election expenses, and

(c) abstract statement of election expenses, referred to in paragraph 6.

These documents shall be authenticated and countersigned by the candidate in case they have been prepared and signed by his election agent and the vouchers shall also be countersigned by him before being lodged. The account of election expenses shall be accompanied by an affidavit of the candidate in Proforma C and shall not be regarded as complete without such an affidavit.

(11) Therefore, as per the above order (1997), in the first instance, the petitioner was required to maintain accounts as per the provisions of paras 3, 4, 5 & 6, and was required to lodge in compliance of para-7 of the order and for maintenance of the account Proforma A and B are prescribed, along with that the petitioner was required to file an affidavit in Proforma C. Clause 4 of para-7 specifically envisages that without filing the affidavit in Proforma C the account of election expenses shall not be regarded as complete without such an affidavit.

(12) The petitioner has nowhere stated in her petition that the accounts were maintained in accordance with the above provisions of the Act and the Order (1997). In the first instance, the petitioner was required to submit true copy of the account as per Section 32-B of the Act, she was required to keep original with her and she should have submitted these accounts before the District Election Officer. In pursuance of the show cause notice issued by the District Election Officer and the State Election Commission she was required to furnish true copies

of the original accounts, which were required to be kept with her and the petitioner has failed to prove this fact. Even if we look into Annexure-P/4, the initials, which are said to be of some employee of the District Election Officer, are not clearly visible and no one can make out from this that which official of District Election Officer received the account, even on notice to her could explain that to whom she submitted the accounts. When the notice was issued by the District Election Officer to the petitioner requesting that she should disclose the name of the officer before whom she presented the accounts, but she failed to disclose the name of that person to whom she presented the accounts.

(13) Sufficient opportunity was granted to the petitioner by the District Election Officer and the State Election Commission to produce the copies of the accounts, but she failed to produce. Even during the course of hearing, whole record was summoned by the Court and the same was perused. There was nothing on record which shows that any account was furnished by the petitioner herein. There is nothing on record which goes to show that the petitioner has been able to prove that true copy of the expenditure incurred by her during election was submitted to the prescribed authority in prescribed proforma, therefore, the petitioner's petition is devoid of any force and merit, as the petitioner has failed to prove and establish that she in compliance with the provisions of Section 32-B of the Act and the order (1997) submitted the accounts of the election expenses in proforma A & B and supported by the affidavit in proforma C.

(14) In the result, I am of the opinion that this petition is liable to be dismissed and it is accordingly dismissed.

Sd/-
L.C.BHADOO
Judge

Barve